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COSTELLO'S TAVERN

UNITED STATES DISTRICT COURT

## DISTRICT OF MASSACHUSETTS - EASTERN SECTION

CHAPPELL & CO., INC., ET AL. ) C.A. No. 1:05-CV-10143-NG  
Plaintiff, )  
v. )  
COSTELLO'S TAVERN, INC. )  
Defendant. )  
) DECLARATION OF THOMAS J.  
GRiffin IN SUPPORT OF  
DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

I, Thomas J. Griffin, hereby declare as follows:

1. I am an attorney duly licensed to practice law before all of the courts in the State of California and local Federal courts. On March 31, 2005 my Pro Hoc Vice motion in this court was granted. I am a partner in the law offices of Nelson ♦ Griffin, attorneys of record for defendant COSTELLO's TAVERN (hereinafter "Costello's"). I am the primary attorney assigned to the handling of this file and if called upon as a witness, I could and would competently testify to the following:

2. Attached hereto as Exhibit "A" is a true and correct copy of ASCAP counsel Steven Young's correspondence of April 26, 2005, detailing ASCAP's unwillingness and/or inability to provide any reasonable information concerning their copyrighted materials that

1 would allow the defendant to avoid the alleged infringement without obtaining a "blanket  
2 license"

3       3. Attached hereto as Exhibit "B" is a true and correct copy of my  
4 correspondence to opposing counsel Steven Young dated June 24, 2005, addressing the  
5 merits of plaintiff's complaint and a good faith attempt to resolve it.

6       4. Attached hereto as Exhibit "C" is opposing counsel Steven Young's  
7 correspondence of July 14, 2005, wherein ASCAP refuses to produce any other investigative  
8 reports prepared by their witness Steven Furtado.

9       5. Attached hereto as Exhibit "D" is correspondence dated May 13, 2005, from  
10 BMI concerning their licensing requirements.

11       6. Attached hereto as Exhibit "E" is a true and correct copy of BMI's proposed  
12 music license. Specifically, item number 7 under fee calculation deals with defendant  
13 Costello's compliance with ASCAP's JLO (jukebox license office) licensing requirements.

14                  The defendant Costello's compliance with plaintiff's JLO (jukebox license  
15 office) requirements is relevant as to ASCAP's underhanded tactics and discovery abuses.  
16 The three performing right organizations (i.e., ASCAP, BMI and SESAC), established a joint  
17 organization called the Jukebox License Office ("JLO") in cooperation with the Amusement  
18 and Music Operators Association, the largest trade organization representing jukebox  
19 operators. The JLO offers a license agreement to operators of "coin-operated phonorecord  
20 players" (jukeboxes), which can be either the owner of the establishment which has the  
21 jukebox or the operator that distributes and maintains the jukeboxes on behalf of  
22 establishment owners. These JLO agreements convey the performing right to the repertoires  
23 of all three performing right organizations for one modest annual fee.

24                  The inference being made here is that BMI, presumptively via their computer  
25 database, was well aware prior to 2005 that Costello's had a valid JLO certificate number  
26 4077. While this information was obviously equally available to ASCAP at all pertinent  
27 times, its investigator investigated this issue and checked off the boxes on his form that their  
28 jukebox was not licensed. To add insult to injury and then further misrepresent their true

1 intentions, ASCAP issued document requests and deposed Costello's owner on the issue.  
2

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct.

5  
6 Executed this 23<sup>th</sup> day of November, 2005, at Los Angeles, California.  
7

8  
9  
10 /s/ THOMAS J. GRIFFIN  
11 THOMAS J. GRIFFIN  
12 Declarant  
13

14 **CERTIFICATE OF SERVICE**  
15

16 I, Myrna Morales, hereby certify that on this 23<sup>rd</sup> day of November, 2005, I served the  
17 following document: **DECLARATION OF THOMAS J. GRIFFIN IN SUPPORT OF**  
18 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL**  
19 **SUMMARY JUDGMENT** pursuant to Fed.R.Civ.P. 26(a)(1) and Local Rule 26.2(A) on  
20 the plaintiffs' counsel by mailing a copy thereof addressed to: Stephen S. Young, Esq.,  
21 Holland & Knight, LLP, 10 St. James Avenue , Boston, MA 02116.  
22

23  
24 /s/ MYRNA MORALES  
25 MYRNA MORALES  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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